

Title 39-A: WORKERS' COMPENSATION
Enacted by PL 1991, c. 885, Pt. A, §8
Chapter 3: WORKERS' COMPENSATION
BOARD Enacted by PL 1991, c. 885, Pt. A, §8

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Maine Revised Statutes
Title 39-A: WORKERS' COMPENSATION
Enacted by PL 1991, c. 885, Pt. A, §8
Chapter 3: WORKERS' COMPENSATION
BOARD Enacted by PL 1991, c. 885, Pt. A, §8

§151. WORKERS' COMPENSATION BOARD

1. Board established. Pursuant to Title 5, section 12004-G, subsection 35, the Workers' Compensation Board is established as an independent board composed of 7 members. The members of the board, including the executive director, must be appointed by the Governor within 30 days after a new board member is authorized or a vacancy occurs, subject to review by the joint standing committee of the Legislature having jurisdiction over labor matters and confirmation by the Legislature. Notwithstanding the provisions of Title 3, section 157, the designated committee shall complete its review of the appointments of the Governor within 15 days of the Governor's written notice of appointment and the vote of the Legislature must be taken no later than 7 days after the vote of the designated committee.

The board consists of 3 representatives of management, 3 representatives of labor and the executive director appointed pursuant to subsection 1-A. All management representatives must be appointed from a list provided by the Maine Chamber of Commerce and Industry or other bona fide organization or association of employers. All labor representatives must be from a list provided by the Executive Board of the Maine AFL-CIO or other bona fide labor organization or association of employees representing at least 10% of the Maine work force. Any list submitted to the Governor must have at least 4 times the number of names as there are vacancies for the group represented by the vacancies.

A member of the board is not liable in a civil action for any act performed in good faith in the execution of duties as a board member.

A member of the board may not be a lobbyist required to be registered with the Commission on Governmental Ethics and Election Practices, a service provider to the workers' compensation system or a representative of a service provider to the workers' compensation system. In addition to the conflict of interest provisions in section 152, subsection 8, a member of the board may not take part in reaching a decision or recommendation in any matter that directly affects an insurer, self-insurer, group self-insurer or labor organization that the member represents.

Members of the board representing management and labor hold office for staggered terms of 4 years, commencing and expiring on February 1st, except for initial appointees and members appointed to fill unexpired terms.

[2009, c. 640, §1 (AMD) .]

1-A. Executive director. The Governor shall appoint an executive director, who is the chair and chief executive officer of the board. The executive director serves at the pleasure of the Governor. Except as otherwise provided, the executive director shall, at the direction of the board, hire personnel as necessary to administer this Act, subject to the Civil Service Law.

[2003, c. 608, §6 (NEW) .]

2. Removal. Board members representing management and labor hold office for the terms provided, unless removed, and until their successors are appointed and qualified. They must be sworn and may be removed by the Governor for inefficiency, willful neglect of duty or malfeasance in office, but only with the review and concurrence of the joint standing committee of the Legislature having jurisdiction over

labor matters upon hearing in executive session or by impeachment. Before removing a board member, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives of the removal and the reasons for the removal.

[2003, c. 608, §7 (AMD) .]

3. Vacancies. If a vacancy occurs during a term of a management or labor member, the Governor shall appoint a replacement to fill the unexpired part of the term. The replacement must be from the group represented by the member being replaced.

[2003, c. 608, §7 (AMD) .]

4. Chair.

[2003, c. 608, §8 (RP) .]

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

[2003, c. 608, §9 (AMD) .]

6. Salary; expenses. A board member is entitled to a per diem of \$100 per day. Members of the board receive their actual, necessary, cash expenses while on official business of the board.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

7. Leave of absence. An employer may not terminate the employment of an employee who is appointed as a member of the board because of the exercise by the employee of duties required as a board member. The member is entitled to a leave of absence from employment for the period of time required to perform the duties of a board member. During the leave of absence, the member may not be subjected to loss of time, vacation time, or benefits of employment, excluding salary.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

8. Headquarters; regional offices. The board must have its central office in the Augusta area and such district offices as it may choose to establish. The board may hold sessions at any place within the State.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

9. Seal. The board must have a seal bearing the words "Workers' Compensation Board of Maine."

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 2003, c. 382, §1 (AMD). 2003, c. 608, §§5-9 (AMD). 2009, c. 640, §1 (AMD).

§151-A. MISSION STATEMENT

The board's mission is to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation. [1997, c. 486, §1 (NEW).]

SECTION HISTORY

1997, c. 486, §1 (NEW).

§152. AUTHORITY OF BOARD; ADMINISTRATION

1. General responsibility. The board has general supervision over the administration of this Act and responsibility for the efficient and effective management of the board and its employees.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

2. Rules. Subject to any applicable requirements of the Maine Administrative Procedure Act, the board shall adopt rules to accomplish the purposes of this Act. Those rules may define terms, prescribe forms and make suitable orders of procedure to ensure the speedy, efficient, just and inexpensive disposition of all proceedings under this Act.

The board shall adopt rules establishing a policy and procedures to safeguard the confidentiality of the records of the former Workers' Compensation Commission and the Workers' Compensation Board pertaining to individual injured employees. The policy must make records available on a need-to-know basis only and must include legitimate research purposes while protecting individual confidentiality.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

2-A. Electronic filing rulemaking. The board shall adopt rules requiring the electronic filing of information required by this Act and by board rule. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. The rules must be developed through the consensus-based rule development process set forth in Title 5, section 8051-B and must include as participants representatives of employers, insurers and 3rd-party administrators. [2003, c. 425, §1 (NEW).]

B. The rules must include written standards and procedures for implementation of the standards, which may include definition of the applicable programming interface for in-state and out-of-state entities required to submit reports. The rules must relate specific forms required to be filed with data points in the standards. [2003, c. 425, §1 (NEW).]

Before adopting the rules, the board shall test the applicable application programming interfaces and standards to ensure that the program operates successfully.

[2003, c. 425, §1 (NEW) .]

3. Employment of executive director.

[2003, c. 608, §10 (RP) .]

4. Employment of general counsel. The board shall employ a general counsel, who is the legal adviser to the board and who shall perform such other duties as may be assigned by the board, and assistants as necessary. The general counsel and assistants to the general counsel are unclassified employees, serve at the pleasure of the board and are not subject to the Civil Service Law.

The board shall appoint a staff attorney to advise the advocates pursuant to section 153-A. The staff attorney is subject to the Civil Service Law and works under the direction of the general counsel.

[1997, c. 486, §2 (AMD) .]

5. Employment of and contracts with hearing officers and mediators. The board shall obtain the services of persons qualified by background and training to serve as hearing officers, who are authorized to take action and enter orders consistent with this Act in all cases assigned to them by the board, and mediators. In the exercise of its discretion, the board may obtain the services of hearing officers and mediators by either of the 2 following methods:

A. The board may contract for the services of hearing officers and mediators, in which case they must be paid reasonable per diem fees for their services plus reimbursement of their actual, necessary and reasonable expenses incurred in the performance of their duties, consistent with policies established by the board; or [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

B. The board may employ hearing officers and mediators to serve at the pleasure of the board and who are not subject to the Civil Service Law. They are entitled to receive reimbursement of their actual, necessary and reasonable expenses incurred in the performance of their duties, consistent with policies established by the board. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

6. Hiring of personnel. The board shall appoint the directors of the bureaus and divisions of the board and their deputies and assistants, who are unclassified employees, serve at the pleasure of the board and are not subject to the Civil Service Law.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

7. Powers and duties of board. The board has all powers as are necessary to carry out its functions under the law. The board may delegate any powers and duties as necessary.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

8. Conflict of interest. Each member of the board and each employee, contractor, agent or other representative of the board are "executive employees" for purposes of Title 5, section 18 and are subject to the limitations of that section. In addition, Title 17, section 3104 is applicable, in accordance with its provisions, to all such representatives of the board.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

9. Accepting gifts, grants or donations. The board may accept gifts, grants or donations for the use of the board as provided by rules adopted by the board.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

10. Case administration. The board shall assume an active and forceful role in the administration of this Act to ensure that the system operates efficiently and with maximum benefit to both employers and employees. It shall continually monitor individual cases to ensure that benefits are provided in accordance with this Act.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

11. Recommending legislative change. The board shall consider and recommend to the Legislature changes in this Act. Recommended changes must be forwarded to the Legislature annually on or before December 1st.

[1995, c. 103, §1 (AMD) .]

12. Advisory committees. The board may appoint advisory committees as it determines necessary to assist the board in matters that arise under this Act. Advisory committee members are not entitled to compensation but may be reimbursed for travel and reasonable expenses as determined by the board.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

13. Budget. The board shall administer its budget, with the assistance of the executive director.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

14. Reimbursement. The board shall impose reasonable charges for reimbursement for the provision of services, facilities and materials, including, but not limited to, reproduction and distribution of forms, reports and publications, photocopying and the use of facilities.

[1993, c. 145, §3 (NEW) .]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 1993, c. 145, §3 (AMD). 1995, c. 103, §1 (AMD). 1997, c. 486, §2 (AMD). 2003, c. 425, §1 (AMD). 2003, c. 608, §10 (AMD).

§153. BOARD ACTIONS

In addition to other actions required of or permitted the board under this Act, the board shall perform the actions required by this section to ensure just and efficient administration of claims. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Monitor payments. The board shall monitor cases to ensure that:

A. Payments are initiated within the time limits established in section 205; and [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Payments to the employee provide the full amount of compensation to which the employee is entitled and are properly indicated on the memorandum of payment. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

2. Troubleshooter program. The board shall establish a troubleshooter program to provide information and assistance to participants in the workers' compensation system. The troubleshooter may meet or otherwise communicate with employees, employers, insurance carriers and health care providers in order to prevent or informally resolve disputes.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

3. Construction. In interpreting this Act, the board shall construe it so as to ensure the efficient delivery of compensation to injured employees at a reasonable cost to employers. All workers' compensation cases must be decided on their merits and the rule of liberal construction does not apply. Accordingly, this Act is not to be given a construction in favor of the employee, nor are the rights and interests of the employer to be favored over those of the employee.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

4. Information. The board shall require the employee, employer or insurer to provide it with any information it reasonably determines necessary to monitor cases, including, but not limited to, preinjury and postinjury wage statements.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

5. Abuse investigation unit. The board shall provide adequate funding for an abuse investigation unit.

A. The board shall, subject to the Civil Service Law, appoint at least 2 abuse investigators who must be qualified by experience and training to perform their duties. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The unit shall, at the direction of the board, investigate all complaints or allegations of fraud, illegal or improper conduct or violation of this Act or rules of the board relating to workers' compensation insurance, benefits or programs, including those acts by employers, employees or insurers. All records, correspondence and reports of investigation in connection with actual or alleged fraud, illegal or improper conduct or violation of this Act or rules of the board and all records, correspondence and reports of criminal prosecution or civil action are confidential. The confidential nature of any such record, correspondence or report does not limit or affect the use of those materials in any prosecution or action or prevent the board, upon request, from providing information to another state agency for use by the agency in enforcing laws and rules. [2009, c. 520, §1 (AMD).]

C. Each employer or employee and each state, county, municipal or quasi-governmental agency shall cooperate fully with the unit and provide any information requested by it. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. The unit shall report all its findings to the board. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. Whenever the board determines that a fraud, attempted fraud or violation of this Act or rules of the board may have occurred, the board shall report in writing all information concerning it to the Attorney General or the Attorney General's delegate for appropriate action, including a civil action for recovery of funds and criminal prosecution by the Attorney General. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

[2009, c. 520, §1 (AMD) .]

6. Mediation. The board shall establish a mediation program to provide mediation services to parties to workers' compensation cases.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

7. Investigation. The board may, when the interests of any of the parties or when the administration of this Act demands, appoint a person to make a full investigation of the circumstances surrounding any industrial injury or any matter connected to an industrial injury, or conduct an audit pursuant to section 359 and report the same without delay to the board.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

8. Impairment guidelines. The following provisions apply regarding impairment guidelines.

A. In order to reduce litigation and establish more certainty and uniformity in the rating of permanent impairment, the board shall establish by rule a schedule for determining the existence and degree of permanent impairment based upon medically or scientifically demonstrable findings. The schedule must be based on generally accepted medical standards for determining impairment and may incorporate all or part of any one or more generally accepted schedules used for that purpose, such as the American Medical Association's "Guides to the Evaluation of Permanent Impairment." Pending the adoption of a permanent schedule, "Guides to the Evaluation of Permanent Impairment," 3rd edition, copyright 1990, by the American Medical Association, is the temporary schedule and must be used for the purposes of this subsection. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

B. The board shall collect and analyze data from Maine cases, studies from other states and generally accepted medical guidelines for occupational impairment to examine the feasibility and desirability of establishing an objectively ascertainable functional capacity standard to be used for determining eligibility for benefits under this Act consistent with section 213, subsection 2. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

9. Audit and enforcement. The executive director shall establish an audit, enforcement and monitoring program by July 1, 1998, to ensure that all obligations under this Act are met, including the requirements of section 359. The functions of the audit and enforcement program include, but are not limited to, auditing timeliness of payments and claims handling practices of insurers, self-insurers, the Maine Insurance Guaranty Association and 3rd-party administrators; determining whether insurers, self-insurers, the Maine Insurance Guaranty Association and 3rd-party administrators are unreasonably contesting claims; and ensuring that all reporting requirements to the board are met. When auditing the Maine Insurance Guaranty Association, the program shall consider when the Maine Insurance Guaranty Association obtained the records of an insolvent insurer. The program must be coordinated with the abuse investigation unit established by section 153, subsection 5 as appropriate. The program must monitor activity and conduct audits pursuant to a schedule developed by the deputy director of benefits administration. Audit working papers are confidential and may not be disclosed to any person outside of the board except the audited entity. For purposes of this subsection "audit working papers" means all documentary and other information acquired, prepared or maintained by the board during the conduct of an audit or investigation, including all intra-agency and interagency communications relating to an audit or investigation and draft reports or any portion of a draft report. The final audit report, including the underlying reconciled information, is not confidential. At the end of each calendar quarter, the executive director shall prepare a compliance report summarizing the results of the audits and reviews conducted pursuant to this subsection. The executive director shall submit the quarterly compliance reports to the board, the Bureau of Insurance and the Director of the Bureau of Labor Standards within the Department of Labor. An annual summary must be provided to the Governor and to the joint standing committees of the Legislature having jurisdiction over labor and banking and insurance matters by February 15th of each year. The quarterly compliance reports and the annual summaries must be made available to the public following distribution.

[2005, c. 603, §3 (AMD) .]

10. Annual report to Legislature. The board shall collect and analyze data from Maine cases on permanent impairment ratings and costs to employers associated with the compensation for partial incapacity pursuant to section 213. The board shall provide annually by January 31st a report to the joint standing committee of the Legislature having jurisdiction over labor matters regarding the data collected.

[2011, c. 647, §1 (NEW) .]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 1997, c. 486, §3 (AMD). 1999, c. 354, §2 (AMD). 2005, c. 603, §3 (AMD). 2009, c. 520, §1 (AMD). 2011, c. 647, §1 (AMD).

§153-A. ADVOCATE PROGRAM

1. Advocate program established. The board shall establish an advocate program to provide assistance to qualified employees who proceed to mediation and formal hearing.

[1997, c. 486, §4 (NEW) .]

2. Qualified employee. For purposes of this section, "qualified employee" means an employee who, with respect to an injury occurring on or after January 1, 1993, has participated in the troubleshooter program and has not informally resolved the dispute and has demonstrated to the board that legal counsel has not been retained.

[1997, c. 486, §4 (NEW) .]

3. Advocates and advocate attorneys. The executive director shall hire advocates and advocate attorneys under the authority of section 151, subsection 1-A, subject to the Civil Service Law, who must be qualified by experience and training.

A. The minimum qualifications for employment as an advocate must include at least the following:

- (1) A 6-year combination of appropriate experience, education and training in advocacy or dispute resolution;
- (2) Knowledge of administrative, adjudicatory or workers' compensation laws, rules and procedures;
- (3) Knowledge of legal documents, court procedures and rules of evidence; and
- (4) Knowledge of medical and legal terminology and practices with respect to workers' compensation. [1997, c. 486, §4 (NEW) .]

A-1. The minimum qualifications for employment as an advocate attorney must include at least admission to the practice of law in the State and current registration with the Board of Overseers of the Bar or eligibility for admission to practice law in the State, as long as the advocate attorney is admitted to practice law in the State and is registered with the Board of Overseers of the Bar within 12 months of the date the advocate attorney was hired. [2007, c. 312, §2 (NEW) .]

B. The board shall ensure that advocates and advocate attorneys receive appropriate and ongoing education and training. [2007, c. 312, §2 (AMD) .]

C. An advocate or advocate attorney may not represent before the board any insurer, self-insurer or 3rd-party administrator for a period of 2 years after terminating employment with the board. [2007, c. 312, §2 (AMD) .]

[2007, c. 312, §2 (AMD) .]

4. Duties of advocates and advocate attorneys. Advocates and advocate attorneys have the following duties:

- A. Assisting qualified employees in matters regarding workers' compensation claims, including negotiations; [1997, c. 486, §4 (NEW).]
- B. Acting as an information resource to qualified employees on laws, decisions, rules, policies and procedures of the board; [1997, c. 486, §4 (NEW).]
- C. Assisting and advocating on behalf of qualified employees to obtain appropriate rehabilitation, return to work and employment security services; [1997, c. 486, §4 (NEW).]
- D. Meeting with or otherwise communicating with insurers, employers and health care and other authorized providers in order to assist qualified employees; [1997, c. 486, §4 (NEW).]
- E. Assisting and advocating on behalf of qualified employees in any mediation or hearing proceeding under the jurisdiction of the board; and [1997, c. 486, §4 (NEW).]
- F. Maintaining confidentiality of information and communications with respect to the assistance and representation provided to qualified employees. [1997, c. 486, §4 (NEW).]

[2007, c. 312, §3 (AMD) .]

5. Legal advice to advocates and advocate attorneys. The board's general counsel shall assign a staff attorney as necessary to advise advocates and, as necessary, advocate attorneys on the preparation of qualified employees' cases at the formal hearing stage.

[2007, c. 312, §4 (AMD) .]

6. Case management authority of advocates and advocate attorneys. An advocate or advocate attorney has the authority to:

- A. Manage and prioritize the advocate's or advocate attorney's caseload to efficiently move cases through the board mediation and hearing process and to achieve resolution; [2007, c. 312, §5 (AMD) .]
- B. With the written approval of the staff attorney, decline cases or cease assistance to an employee when the advocate or advocate attorney after investigation finds:
 - (1) Timely notice of the injury was not given by the employee to the employer, pursuant to this Act;
 - (2) The statute of limitations has expired;
 - (3) The employee's case is based on an argument or issue adversely determined by the Supreme Judicial Court;
 - (4) The employee's case is based on a claim of discrimination governed by section 353;
 - (5) There is no record of medical assessment stating that the employee's injury was either caused by, aggravated by or precipitated by the employee's work or, when the issue is aggravation, there is no record of medical assessment stating that the employee's work aggravated a preexisting condition in a significant manner; or
 - (6) The employee has admitted to a fraudulent act, has been convicted of a fraudulent act by a court of competent jurisdiction or has been found to have committed a fraudulent act by the abuse investigation unit of the board; and [2007, c. 312, §5 (AMD) .]
- C. With the written approval of the staff attorney, present lump-sum settlements on cases pursuant to section 352. [1999, c. 410, §1 (NEW) .]

A qualified employee whose case is declined or whose advocate or advocate attorney assistance ceases pursuant to this subsection may appeal the action to the executive director of the board, within 30 days of the action. The executive director's ruling on the appeal is final and is not subject to judicial review. If the

executive director finds assistance by an advocate or advocate attorney should resume, the employee must be assigned to an advocate or advocate attorney other than the advocate or advocate attorney who declined the case or ceased assistance.

[2007, c. 312, §5 (AMD) .]

7. Rulemaking. In addition to the case management authority established in subsection 6, the board may establish by rule additional reasons for which the advocates may decline or cease assistance on cases. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1999, c. 410, §1 (NEW) .]

SECTION HISTORY

1997, c. 486, §4 (NEW). 1999, c. 410, §1 (AMD). 2003, c. 608, §11 (AMD). 2007, c. 312, §§2-5 (AMD).

§154. DEDICATED FUND; ASSESSMENT ON WORKERS' COMPENSATION INSURERS AND SELF-INSURED EMPLOYERS

The Workers' Compensation Board Administrative Fund is established to accomplish the purposes of this Act. All income generated pursuant to this section must be recorded on the books of the State in a separate account and deposited with the Treasurer of State and be credited to the Workers' Compensation Board Administrative Fund. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

1. Use of fund. All money credited to the Workers' Compensation Board Administrative Fund must be used to support the activities of the board and for no other purpose. Any balance remaining continues from year to year as a fund available for the purposes set out in this section and for no other purpose.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

2. Expenditures. Expenditures from the Workers' Compensation Board Administrative Fund are subject to legislative approval and allocation in the same manner as appropriations are made from the General Fund. The joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs shall approve the allocation.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

3. Assessment on workers' compensation insurance. The following provisions apply regarding the Workers' Compensation Board assessment on workers' compensation insurance.

A. Every insurance company or association that writes workers' compensation insurance in the State and that does business or collects premiums or assessments in the State, including newly licensed insurance companies and associations, shall pay to the board the assessment determined pursuant to this section for the purpose of providing partial support and maintenance of the board. [1995, c. 59, §1 (AMD) .]

B. The assessment must be stated as a percentage of each employer's premium base. In determining the assessment percentage, consideration must be given to the balance in the Workers' Compensation Board Administrative Fund. [1995, c. 59, §1 (AMD) .]

B-1. An employer's premium base for assessment purposes is defined as payroll times the filed manual rate applicable to the employer times the employer's current experience modification factor, if applicable. The calculation may not include any deductible credit, other than credits for the \$1,000 and \$5,000 indemnity deductibles and the \$250 and \$500 medical deductibles established pursuant to

Title 24-A, sections 2385 and 2385-A. For policies written using retrospective rating, the premium base must be calculated in accordance with this paragraph regardless of the actual retrospective premium calculation.

The employer's premium base is subject to the final audit requirements of the Bureau of Insurance Rule, Chapter 470. If the audit results in a change in premium base, the amount of the assessment must be adjusted accordingly. [1995, c. 59, §1 (NEW).]

C. For each fiscal year, the initial assessment percentage must be determined by the board by May 1st of the prior fiscal year. Insurance companies or associations must begin collecting the initial assessment from all employers on July 1st of each year. In establishing the assessment percentage, the board shall estimate the expected premium base for the upcoming fiscal year based on the returns filed under paragraph D and anticipated trends in the insurance marketplace. The board shall consult with the Bureau of Insurance and other knowledgeable sources to help determine the trends. The board may adjust the assessment percentage at any time but shall provide written notice to the affected companies and associations at least 45 days prior to the effective date of the adjustment. The board may not adjust the assessment percentage more than 3 times in a fiscal year. The adjusted assessment percentage must be applied prospectively on policies with an effective date on or after the effective date of the adjustment. [1995, c. 59, §1 (AMD).]

D. Every insurance company or association subject to the assessment imposed by this section with an estimated annual payment of \$50,000 or more based on previous assessment returns may make payments quarterly. Each insurance company or association electing quarterly payments must on or before the last day of each January, each April, the 25th day of each June and the last day of each October file with the board on forms prescribed by the board a return for the quarter ending the last day of the preceding month, except the month of June, which is for the quarter ending June 30th and remit payment of the assessment based upon the results for the quarter reported. A final reconciled annual return must be filed on or before September 15th covering the prior fiscal year in which the previous assessment was levied. The final return must be certified by the company's or association's chief financial officer. Insurance companies or associations with an annual assessment estimate of under \$50,000 shall pay the assessment on or before June 1st and shall also file a quarterly and an annual return on forms prescribed by the board. Affiliated insurers may aggregate their collection volume in order to meet the \$50,000 assessment threshold as long as the affiliation is consistent with the standards defined in Title 24-A, section 222. Those qualifying insurance companies or associations that opt to consolidate their quarterly payments and reports may do so only if each individually licensed company or association is individually reported within each consolidated return. [1995, c. 59, §1 (AMD).]

[1995, c. 59, §1 (AMD) .]

4. Assessment on self-insured employers. Every self-insured employer approved pursuant to section 403 shall, for the purpose of providing partial support and maintenance of the board, pay an assessment on aggregate benefits paid by each member pursuant to section 404, subsection 4. This assessment must be a dollar amount.

[1995, c. 59, §2 (AMD) .]

5. Amounts of premiums and losses; distribution of assessment. The Bureau of Insurance shall provide to the board the amounts of gross direct workers' compensation premiums written by each insurance carrier and the amounts of aggregate benefits paid by each self-insurer and group self-insurer on or before April 1st of each year. Beginning with the assessment for the fiscal year beginning July 1, 1995 and thereafter, the total assessment must be distributed between insurance companies or associations and self-insured employers in direct proportion to the pro rata share of disabling cases attributable to each group for the most recent calendar year for which data is available. This distribution of the assessment must be determined on a basis consistent with the information reported by the Department of Labor, Bureau of Labor Standards, Research and Statistics Division in its annual Characteristics of Work-Related Injuries

and Illnesses in Maine publication, provided that any segment of the market identified as "not-insured" be excluded from the calculation of proportionate shares. In consultation with the Director of Labor Standards, the board shall determine a date prior to the required assessment to establish the distribution.

[1995, c. 59, §3 (AMD) .]

6. Assessment. Assessments levied under this section are subject to the following.

A. The assessments levied under this section may not be designed to produce more than \$10,000,000 beginning in the 2008-09 fiscal year, more than \$10,400,000 beginning in the 2009-10 fiscal year, more than \$10,800,000 beginning in the 2010-11 fiscal year or more than \$11,200,000 beginning in the 2011-12 fiscal year. Assessments collected that exceed the applicable limit by a margin of more than 10% must be used to reduce the assessment that is paid by insured employers pursuant to subsection 3. Any amount collected above the board's allocated budget and within the 10% margin must be used to create a reserve of up to 1/4 of the board's annual budget. [2009, c. 109, §1 (AMD); 2009, c. 109, §2 (AFF).]

B. The board, by a majority vote of its membership, may use its reserve to assist in funding its Personal Services account expenditures and All Other account expenditures and to help defray the costs incurred by the board pursuant to this Act including administrative expenses, consulting fees and all other reasonable costs incurred to administer this Act. The board shall notify the chairs and members of the joint standing committee of the Legislature having jurisdiction over labor matters whenever the board receives approval from the State Budget Officer and the Governor to use reserve funds to increase its allotment above the allocation authorized by the Legislature. Any collected amounts or savings above the allowed reserve must be used to reduce the assessment for the following fiscal year. [2007, c. 240, Pt. LL, §1 (NEW).]

C. The board shall determine the assessments prior to May 1st annually and shall assess each insurance company or association and self-insured employer its pro rata share for expenditures during the fiscal year beginning the immediately following July 1st. Each self-insured employer shall pay the assessment on or before the immediately following June 1st. Each insurance company or association shall pay the assessment in accordance with subsection 3. [2007, c. 240, Pt. LL, §1 (NEW).]

[2009, c. 109, §1 (AMD); 2009, c. 109, §2 (AFF) .]

7. Insurance company or association collections. Insurance companies or associations shall bill and collect assessments under this section on insured employers. The assessments must be separately stated amounts on all premium notices and may not be reported as premiums for any tax or regulatory purpose or for the purpose of any other law. All collected payments must be submitted to the board with the next quarterly payment. The Bureau of Insurance shall report to the board all newly authorized workers' compensation carriers in order to facilitate notification to the new carrier of its obligations under this section.

[1995, c. 59, §5 (AMD) .]

8. Violations. Any insurance company, association or self-insured employer subject to this section that willfully fails to pay an assessment in accordance with this section commits a civil violation for which a forfeiture of not more than \$500 may be adjudged for each day following the due date for which payment is not made.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

9. Deposit of funds; investment. All revenues derived from assessments levied against insurance companies, associations and self-insured employers described in this section must be reported and paid to the Treasurer of State and credited to the Workers' Compensation Board Administrative Fund. The Treasurer of State may invest the funds in accordance with state law. All interest must be paid to the fund.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

10. Deposit of funds in Workers' Compensation Board Administrative Fund. The Treasurer of State shall deposit in the Workers' Compensation Board Administrative Fund funds collected pursuant to section 152, subsection 14.

[1993, c. 145, §5 (NEW) .]

11. Assessment errors.

[1995, c. 59, §6 (RP) .]

12. Audit. In consultation with the Bureau of Insurance, the board may audit all returns and investigate any issues relevant to the collection and payment of any assessment under this section.

[1995, c. 59, §7 (NEW) .]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 1993, c. 145, §§4,5 (AMD). 1993, c. 619, §§2,3 (AMD). 1995, c. 59, §§1-7 (AMD). 1997, c. 486, §5 (AMD). 1999, c. 359, §1 (AMD). 2001, c. 393, §1 (AMD). 2001, c. 692, §1 (AMD). 2003, c. 93, §1 (AMD). 2003, c. 425, §2 (AMD). 2007, c. 240, Pt. LL, §1 (AMD). 2009, c. 109, §1 (AMD). 2009, c. 109, §2 (AFF).

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